



State of Hawaii  
Department of Health  
Clean Water Branch

**Do NOT submit  
this document.**

HAR Sections 11-54-09.1 to 11-54-09.1.09

**Guidelines for the Section 401 Water Quality Certification (WQC)  
Application**

See Note 18.I. for the list of abbreviations which are used throughout these guidelines.

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1. Owner Information

The owner is the organization or person which/who is developing the project, not necessarily the owner of the land.

2. General Contractor Information

This is the organization which is in charge of constructing the project. This information may be provided to the CWB within 30 days after award of the construction contract.

3. Emergency Contact Information

Provide the name and two (2) phone numbers of at least two persons who may be contacted in case of emergency regarding “discharges” into the navigable waters.

4. Project Site Information

Also provide the project’s Federal, State, City, or County project/job number(s), as applicable.

5. Associated Permits or Licenses

- a. Provide the Department of the Army (DA) permit or license file number, type of the DA permit (i.e., NWP, GP, IP, LOP, etc.), and permit authorization (i.e., CWA, RHA, MPRSA, etc.).
- b. Provide the Section 402 NPDES Permit number and/or NGPC file number which is associated with this project activity, as applicable.
- c. Provide the RCRA Permit number for any hazardous wastes stored or used at the project, as applicable.
- d. For SARA, indicate the chemicals and their quantities at the project site, as applicable.
- e. Others (i.e., Underground Injection Control file number, Stream Channel Alteration Permit file number, CZM approval or file number, etc.), as applicable.

6. Receiving State Water Information

State water classification is available on the Water Quality Standards Map dated October 1987 from the CWB or in HAR Chapter 11-54 which may be downloaded from [www.state.hi.us/doh/rules/emd/cwrule.html](http://www.state.hi.us/doh/rules/emd/cwrule.html) in pdf format. Provide associated existing uses including the recreational uses of the affected water body.

7. Project Description

See Guidelines for CWB-WQC Application - Note 18.k. for definitions of “discharge,” “pollutant,” “discharge of a pollutant,” “discharge of pollutants,” “navigable waters,” and “waters of the United States.”

- a. Provide the boundary coordinates of the project requiring the federal permit or license. Indicate the beginning and ending coordinates where the “discharge(s)” may enter the stream or shoreline projects. Indicate the center point coordinate where the

“discharge(s)” may enter other types of projects (i.e., wetlands, etc.). The coordinates shall be indicated to the nearest one (1) second of latitude and longitude.

- b. The overall project description should include: the project activities both in and out of the navigable waters, the construction or operation of facilities which may result in any direct and/or indirect “discharges” into State waters.
  - c. Provide a description of the “discharge” (i.e., storm water runoff, dredged spoil dewatering return flow and runoff, placement of backfill, pouring or placement of concrete, sand placement for beach nourishment, equipment in the water, etc.).
  - d. List all “discharge” activities that the owner is seeking coverage for under this WQC application (i.e., sand replenishment, backfills, etc.).
  - e. The biological, chemical, thermal, and any other pertinent characteristic of the “discharge” activity. These may include: nutrients from dredging, pre-drilling, or pile-driving activities; turbidity from leaks during tremie concrete placement; etc.
8. Description of the Existing Environment and Potential Environmental Effects from the Construction Activities
- a. Provide a survey report, if available, and photographs of existing physical environment. Provide a discussion on the environmental effects on water, land, sediment, soil, air, etc.
  - b. Provide monitoring data for existing chemical environment. Provide a discussion on the environmental effects on the water column, sediments, air, etc.
  - c. List all species, specifically native species, and habitats for existing biological environment. Provide a discussion on the environmental effects on plants, animals, and habitats.
  - d. Provide the existing use and effects on existing human activities such as recreational activities, propagation of fish, shellfish, or other aquatic animals, plants, etc. Provide a Mitigation/Compensation Plan in Item 12 if the project construction will result in adverse environmental effects or will interfere with or become injurious to any assigned uses made of or presently in State waters.
9. Project Schedule
- a. If the project construction schedule is not established, provide a best estimate of the project begin and end dates. An updated project construction schedule shall be submitted to the DOH 30 calendar days before the start of construction activities.
  - b. If the project discharge schedule is not established, provide a best estimate of the date or dates that the discharge will begin and end. Provide an exact discharge date at least three (3) working days prior to the commencement of the discharge.
10. Site-Specific Best Management Practices (BMPs) Plan
- A site-specific BMPs Plan shall be designed, implemented, operated, and maintained by the owner and/or its duly authorized representative in a manner to properly isolate and confine the discharge activity(ies) and to contain and prevent any potential pollutant(s) discharges from adversely impacting the State waters. The BMPs Plan shall include the following:

- a. Map(s) showing the location of the construction site (i.e., ocean, perennial stream, intermittent stream, wetlands, estuary, reservoir, etc.) and structural control measure(s) including typical sections, stockpiling site(s), treatment facility(ies), return flow discharge site(s), etc.:
  - i. Provide the location map on 8-1/2 by 11 inches sized paper or folded to 8-1/2 by 11 inches. Show at least one mile beyond the property boundaries of the project site on the map.
  - ii. Show the project site on a plat map or other appropriate map, including all of the required information.
  - iii. Also, if the project site(s) is located in a special aquatic site or in the immediate vicinity of a special aquatic site, include a delineation of the special aquatic site (including wetlands). Provide a Mitigation/Compensation Plan in Item 12 if fills or dredged/excavated material are to be placed in the special aquatic site, and/or if there will be any losses to the special aquatic site, in either function or acreage or both.
- b. The Site Characterization which identifies the ambient conditions at the project site and a description of any specific measures needed to protect the ecosystem at the project site.
- c. The construction sequence constitutes an important portion of the water pollution control plan. The construction sequence shall be arranged to minimize the potential adverse impact(s) resulting from the proposed construction activities. The construction schedule shall be clearly described, particularly, the schedule for any in-stream and/or in-water work. Selection of the dry-season, low-flow, or no-flow period to conduct the in-stream construction activities is preferred. A contingency plan is required to ensure that, even under the worst case scenario, the construction activity will have minimal adverse impact(s) on the State waters.
- d. Identification of the specific construction method(s) to be applied with respect to each type of construction activity proposed including a description of the type of equipment involved and how and where this type of equipment would be employed.
- e. The potential discharge shall be described. At a minimum, this description shall specify the source(s), quantity (in cubic yards, gallons per day, etc.), and duration (in hours, days, weeks, etc.) of the proposed "discharges":
  - i. Materials placed or to be placed, both temporarily or permanently, into State waters:
  - ii. Materials that may enter State waters due to the proposed construction activities such as soil erosion, discharges from the trenching activity, bedding materials, construction debris, removed vegetation and soil attached to the roots, construction dewatering effluent discharges, hydrotesting effluent discharges, storm water discharges associated with the construction activities, runoff from excessive construction site dust control process, runoff from stockpiling site, concrete truck washdowns, etc.;
  - iii. Materials that may re-enter State waters such as runoff or return flow from the dredged/excavated material dewatering site or runoff from the dredged/excavated material stockpiling site(s);
  - iv. Discharges associated with the operation and maintenance of the equipment involved, such as oil leak(s) from the equipment, spills from the equipment fueling operation, spills from the fuel storage facility, etc.; and

- v. Temporary structure(s) construction, removal and restoration related discharges such as from the construction and removal of berm(s), dike(s), cofferdam(s), sheet piling(s), sandbag(s), silt curtain(s) etc.
- f. Description of the dredged/excavated material (wet or dry). If dewatering of the dredged/excavated material is needed and discharge of dewatering effluent is anticipated:
  - i. Description of type, composition, and quantity of the material to be excavated/dredged;
  - ii. An acceptable dewatering treatment and discharging plan shall be prepared and submitted; and
  - iii. Location(s) for dredged/excavated material stockpile site, dewatering treatment site, dredged/excavated material disposal site(s), and dewatering discharge point shall be identified on an 8-1/2 by 11 inches sized map.
- g. The selection of the most appropriate and effective control measure(s) shall be based on the information obtained in Items 10.a., 10.b., 10.c., 10.d., 10.e., and 10.f. In some cases, treatment is required before the discharges can be permitted to enter or re-enter the State waters.

#### 11. Applicable Monitoring and Assessment Plan

The Applicable Monitoring and Assessment Plan shall be prepared. At a minimum, it shall include the following:

- a. Description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge:
  - i. Monitoring parameters (see General Monitoring Guideline for Section 401 Water Quality Certification Projects on page 18),
  - ii. Type of sample (i.e. grab sample, composite sample, etc.),
  - iii. Sampling devices,
  - iv. Units of measure,
  - v. Sampling frequency (see General Monitoring Guideline for Section 401 Water Quality Certification Projects on page 18)
  - vi. Sampling method,
  - vii. Sampling location(s) of the monitoring point(s) on a map, and
  - viii. Quality Assurance/Quality Control Methods.
- b. Description of the methods and means being used to monitor/maintain all pollutant control measures.
- c. Reporting requirements shall include time and frequency of the reports (i.e., every month, etc.), method of the report (i.e., faxed, mailed or delivered); and content of the report. Send the report to the DOH at an address indicated in Note 18.c.
- d. A narrative of how the monitoring results will be used to demonstrate whether or not the project construction activity was in compliance with the applicable State water quality standards. The assessment shall also include a discussion on whether there is a net loss of special aquatic sites after the implementation of mitigation/compensation measures, if applicable.

#### 12. Mitigation/Compensation Plan

This item is applicable to all discharges that affect special aquatic sites as specified in 40 CFR Sections 230.40 - 230.45. A "special aquatic site" may be any one of the following: sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs, and riffle and pool complexes.

If the placement of fills or dredged/excavated material into any special aquatic site is involved, the owner or its duly authorized representative shall also submit to the DOH for review and comment a Mitigation/Compensation Plan that is approved by the COE, Honolulu Engineer District in accordance with "MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF THE INTERIOR AND THE DEPARTMENT OF THE ARMY (effective as of December 21, 1992)" or any applicable amendment thereafter.

13. Supporting Documents

If reference is made to supporting documents, the reference document must be identified by title, date, page number, and paragraph. In addition, a copy of each supporting document, including a copy of the related Federal Permit or License determination, shall be submitted with the Section 401 WQC Application.

14. Additional Information

a. Indicate the mailing addresses of the owner, general contractor, or project in this section, as applicable. Explain any irregularities or unique features of the project. Provide any additional site-specific information required specifically to justify the project's qualification under the conditional blanket certification or under certain DA NWP, GP, or PGP authorizations. Additional sheets may be attached with reference to Item 14.

b. Provide, in this section, the requirements from Item No. 13.b.(5) to 13.b.(8) of the Friday, December 13, 1996 Federal Register, Volume 61, No. 241, Pages 65920-65921.

i. NATIONWIDE PERMIT NO. 21 - SURFACE COAL MINING ACTIVITIES

The PCN must include a U.S. Department of the Interior, Office of Surface Mining (OSM) or State approved mitigation plan.

ii. NATIONWIDE PERMIT NO. 29 - SINGLE-FAMILY HOUSING

The PCN must also include:

- (1) Any past use of this NWP by the individual permittee and/or the permittee's spouse;
- (2) A statement that the single-family housing activity is for a personal residence of the permittee;
- (3) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring 0.5 acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 0.5 acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the COE (see paragraph 13(f) of the Friday, December 13, 1996 Federal Register, Volume 61, Number 241, page 65922); and
- (4) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership

(including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed.

iii. NATIONWIDE PERMIT NO. 31 - MAINTENANCE OF EXISTING FLOOD CONTROL PROJECTS

The prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five (5) year (or less) maintenance plan. In addition, the PCN must include all of the following:

- (1) Sufficient baseline information so as to identify the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided that the approved flood control protection or drainage is not increased;
- (2) A delineation of any affected special aquatic sites, including wetlands; and
- (3) Location of the dredged material disposal site.

iv. NATIONWIDE PERMIT NO. 33 - TEMPORARY CONSTRUCTION, ACCESS, AND DEWATERING

The PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources.

c. Provide, in this section, the additional requirements indicated in Item 5.b. of the April 15, 1998 Section 401 Water Quality Certification (File No. WQC 0000335) for the PCNs for the following Nationwide Permits:

i. NATIONWIDE PERMIT NO. 3 - MAINTENANCE

The owner or its duly authorized representative shall submit evidence that the structure(s) or fill(s) to be repaired or rehabilitated was previously authorized by the Honolulu Engineer District or the DOH or both and the structure(s) or fill(s) is currently serviceable.

ii. NATIONWIDE PERMIT NO. 16 - RETURN WATER FROM UPLAND CONTAINED DISPOSAL AREA

The owner or its duly authorized representative shall submit the following information:

- (1) A Detailed Dewatering Plan. The Plan, at a minimum, shall include the sediment quality data, treatment design, design concerns, calculations used in the treatment design, and proposed mitigative measures.
- (2) An applicable dewatering return flow (effluent) water chemistry monitoring plan.

iii. NATIONWIDE PERMIT No. 31 - MAINTENANCE OF EXISTING FLOOD CONTROL FACILITIES

The owner or its duly authorized representative shall submit the following information:



- (1) The proof that debris basins, retention and/or detention basins, or channels to be maintained was either (i) previously authorized by the Honolulu Engineer District by individual permit, general permit, or by 33 CFR 330.3 and constructed or (ii) constructed by the Corps and transferred to a local sponsor for operation and maintenance;
- (2) Previously approved project scope and design and the Honolulu Engineer District approved maintenance baseline; and
- (3) An approved Mitigation Plan.

iv. **NATIONWIDE PERMIT No. 33 - TEMPORARY CONSTRUCTION, ACCESS AND DEWATERING**

The owner or its duly authorized representative shall submit the following information:

- (1) A Detailed Dewatering Plan. The Plan, at a minimum, shall include the sediment quality data, treatment design, design concerns, calculations used in the treatment design, and proposed mitigative measures.
- (2) An applicable dewatering effluent discharge monitoring plan.

15. **Statement of Choice of Publication**

- a. The owner shall choose to publish a Public Notice of Proposed Action or a Public Notice of Public Hearing.
- b. The DOH suggests that if the owner or its duly authorized representative feels that the proposed "discharge" activity is highly controversial, the owner or its duly authorized representative should request to bypass the Public Notice of Proposed Action and elect to arrange for a public hearing via the Public Notice of Public Hearing.
- c. This item is not applicable for submittals of PCNs which qualified under a conditionally certified WQC such as:
  - i. April 15, 1998 issued Section 401 WQC (File No. WQC 0000335) for DA NWP Nos. 3, 4, 5, 6, 13, 14, 16, 18, 19, 22, 25, 31, 33, 36, and 38 Promulgated on December 13, 1996, Federal Register, Volume 61, No. 241, in the State of Hawaii
  - ii. December 10, 1996 issued Section 401 WQC (File No. WQC 0000305) for DA GP 96-001 for Maintenance Clearing of Rivers, Streams, Storm Drains, and Beach Areas in Waters of the United States, including Navigable Waters of the United States, in the State of Hawaii
  - iii. September 9, 1996 issued Section 401 WQC (File No. WQC 0000298) for DA GP 94-001 for 19 Listed Molokai Fishponds Restoration, Repair, Maintenance or Reconstruction in the Waters of the United States, including Navigable Waters, in the State of Hawaii
  - iv. April 3, 1996 issued Section 401 WQC (File No. WQC 0000174) for DA GP 95-002 for Utility Lines In, Under or Above Waters of the United States, including Navigable Waters, in the State of Hawaii

16. **Authorization of Representative**

- a. Alteration of this item will result in the invalidation of the authorization statement(s).

- b. Authorization statements are provided for the owner to complete as required. Options include statement a, b, c, a and c, or d.
  - i. Option "a": This authorization begins with Section 401 WQC Application processing and ends upon the owner's receipt of the Section 401 WQC.
  - ii. Option "b": This authorization begins with Section 401 WQC Application processing and ends upon termination of the discharge to State waters.
  - iii. Option "c": This authorization begins upon the owner's receipt of the Section 401 WQC and ends upon termination of the discharge to State waters.
  - iv. Option "d": If authorization statements a, b, and/or c do not meet the intent of the authorization, the owner or its duly authorized representative may attach a separate authorization statement specifying the limited authorization of the representative.
- c. Additional information will be requested from the authorized representative (with a copy to the owner) at the street or mailing address or phone or fax number provided for this item, as applicable.
- d. Provide the duly authorized representative's information in the applicable item(s). There shall be only one duly authorized representative at any time. The designated duly authorized representative may be changed by the owner at any time during the processing of the CWB-WQC Form or the term of the Section 401 WQC. The duly authorized representative will no longer be authorized effective on the date of receipt of any new authorization statement from the owner.
- e. HAR Section 11-55-07(b) states:
 

"A person is a duly authorized representative only if:

  - (1) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.);
  - (2) The authorization is made in writing by a person designated under subsection (a); and
  - (3) The written authorization is submitted to the director."

HAR Chapter 11-55 may be downloaded from "[www.state.hi.us/doh/rules/emd/cwrule.html](http://www.state.hi.us/doh/rules/emd/cwrule.html)" in pdf format.

## 17. Certification

- a. Do not alter the statements in or format of this item. Alteration of this item will result in the invalidation of this submittal.
- b. The person certifying this Section 401 WQC Application must meet one of the descriptions as indicated in the form and be employed by the owner listed in Item 1.

- c. Statement of Assurance - The owner shall ensure that the State Water Quality Standards shall not be violated.
- d. Original signature is needed.

18. General Information

a. Section 401 Water Quality Certification (WQC)

- i. The State of Hawaii, DOH is authorized under Section 401 of the Federal Clean Water Act and Section 342D-53 of the Hawaii Revised Statutes to administer the Section 401 WQC program in Hawaii. The Section 401 WQC program is described in Sections 11-54-09.1 to 11-54-09.1.09 of the HAR Chapter 11-54 entitled "Water Quality Standards."
- ii. A WQC issued by the DOH pursuant to Section 401 of the CWA is required by any owner or its duly authorized representative applying for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any "discharge" into navigable waters.
- iii. The DOH suggests that the owner or its duly authorized representative check with the issuing and permitting Federal agency to determine whether or not a Federal license or permit is required before submitting a Section 401 WQC Application. The following more common Federal permits may require a Section 401 WQC prior to issuance:
  - (1) Section 404 Permit of the Clean Water Act of 1977. Issuing authority is the U.S. Army COE.
  - (2) Section 402 Permit of the Clean Water Act of 1977. If the issuing authority is the EPA.
  - (3) Section 9 Permit of the Rivers and Harbors Act of 1899. Issuing authority is the U.S. Coast Guard.
  - (4) Section 10 of the Rivers and Harbors Act of 1899. Issuing authority is the U.S. Army COE.
  - (5) Section 102 Permit of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. Issuing authority is the U.S. EPA.
  - (6) Section 103 Permit of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. Issuing authority is the U.S. Army COE.
  - (7) Section 23(b) of the Federal Power Act. Issuing authority is the Federal Energy Regulatory Commission.

b. Availability of Section 401 WQC Applications

The CWB-WQC Application is a WordPerfect 6.1 document. Hard copies and electronic files are available. The CWB-WQC Application and Guideline may be downloaded from "www.state.hi.us/doh/eh/cwb/forms" in pdf or WordPerfect 6.1 format. See Note 21.c.i. for the addresses.

c. Inquiries and Submittals

- i. Section 401 WQC inquiries and submittals shall be directed to the street or mailing address listed below:
    - (1) *Street Address*

State of Hawaii  
Department of Health  
Environmental Management Division  
Clean Water Branch  
919 Ala Moana Boulevard, Room 301  
Honolulu, Hawaii 96814-4920
    - (2) *Mailing Address*

State of Hawaii  
Department of Health  
Environmental Management Division  
Clean Water Branch  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378
  - ii. Questions should be directed to the Clean Water Branch Engineering Section at (808) 586-4309 or fax number (808) 586-4352.
  - iii. For projects on Oahu, submit the original Section 401 WQC Application with the owner's original signature and supporting documents.
  - iv. For projects located on islands other than Oahu, submit two (2) copies of the Section 401 WQC Application and supporting documents. One copy of the Section 401 WQC Application shall include the owner's original signature.
  - v. The owner or its duly authorized representative is encouraged to apply for certification at least one hundred eighty (180) days prior to the start of "discharge" activities.
  - vi. Retain a copy of the Section 401 WQC Application and supporting documents for the owner's or duly authorized representative's records.
- d. Filing Fee
- i. Every owner, including federal, state, and county government agencies, who submits a Section 401 WQC Application for a Section 401 WQC shall pay a filing fee of \$1000.00 except for an activity which meets the DOH conditional blanket certification criteria issued to the U.S. Army COE, Honolulu Engineer District for the required regional or nationwide general permits.
  - ii. The filing fee shall be submitted with the Section 401 WQC Application and shall be made payable to the "State of Hawaii" in the form of a cashier's check or money order.
  - iii. The filing fee shall not be refunded nor applied to any subsequent Section 401 WQC Application following final action of a denial or termination of the submittal.
  - iv. A Section 401 WQC Application submitted by the U.S. Army COE, Honolulu Engineer District, for the purpose of adopting regional or nationwide general permits, in accordance with 33 CFR Parts 325 and 330, respectively, shall be exempt from the payment of filing fees.
- e. Completeness of the Section 401 WQC Application

- i. The submittal will not be considered complete unless every item on the Section 401 WQC Application is appropriately addressed.
  - ii. A response must be provided for each item. If an item is not relevant to the proposed activity, indicate with "Not Applicable" or "N/A," to show that the item was considered.
  - iii. An incomplete Section 401 WQC Application will delay the determination of the Section 401 WQC. An incomplete Section 401 WQC Application may be returned to the owner or its duly authorized representative for more information. This could delay the processing of the certification application.
- f. Notification
  - i. Acknowledgment of Section 401 WQC Application: The Director will notify the owner or operator or its duly authorized representative of receipt of the Section 401 WQC Application.
  - ii. The Director shall notify the owner or its duly authorized representative, in writing, if the Section 401 WQC Application is incomplete or otherwise deficient. A description of the type of additional information necessary to complete the Section 401 WQC Application or correct the deficiency will be included with the written notice.
  - iii. Processing of the Section 401 WQC Application shall not be completed until such time as the owner or its duly authorized representative has supplied the missing information or otherwise corrected the deficiency. Failure to provide additional information or to correct a deficiency shall be sufficient grounds for denial of the Section 401 WQC.
  - iv. The owner or its duly authorized representative will be informed, in writing, by the Director when a Section 401 WQC Application is considered to be complete.
  - v. The owner or its duly authorized representative is required to notify the Director, in writing, of any changes which may affect the certification process.
  - vi. See the "Section 401 Water Quality Certification Processing Flowchart" dated July 15, 1997 on page 19 and the "Section 401 Water Quality Certification (WQC) Blanket Coverage Processing Flowchart" dated April 12, 1999 on page 20 of these Guidelines.
  - vii. For projects which qualify for coverage under the DOH's conditional blanket certifications, the DOH shall have 30 days to review and provide comment after receiving the required information. The owner or its duly authorized representative shall properly address the DOH's concern(s) and comment(s) within 30 days of the DOH's notification. Failure to properly address the DOH's concern(s) or comment(s) or correct a deficiency shall be sufficient grounds for denial of a Section 401 WQC without prejudice. The owner or its duly authorized representative may resubmit a complete Notification for a Section 401 WQC.
- g. Public Notices
  - i. The DOH shall prepare all public notices for publication by the owner or its duly authorized representative. The owner or its duly authorized representative shall pay for the publication of the Public Notice of Proposed Action or Public Notice of Public Hearing, whichever is applicable. The owner or its duly authorized representative should review the public notice for accuracy to avoid delays and/or republication costs. The owner or its duly authorized representative shall submit

an affidavit certifying publication of the public notice within two (2) weeks of the publication date.

- ii. A Public Notice shall be published for solicitation of public participation once in a daily newspaper of general circulation and/or if applicable, in a daily newspaper of general circulation for the neighbor island counties. The public notice shall be published on a date specified by the Director.
- iii. On a case-by-case basis, public hearings may be arranged (date, time, place) by the CWB and the hearing will be conducted by the hearing officer designated by the Director. In addition to the hearing officer, a CWB staff member will be present to serve as a resource person and the owner or its duly authorized representative will be requested to send a representative to attend the scheduled hearing to present testimony supporting the Section 401 WQC request.

h. Section 401 Water Quality Certification Issuance

- i. If after publication of the Public Notice of Proposed Action, there are no significant adverse comments or justifiable request(s) for a public hearing during the thirty (30) day public participation comment period, the Director will make a final determination for issuance or denial of a Section 401 WQC.
- ii. After a public hearing, if applicable, the Director shall consider all evidence and testimonies presented and make a final determination for the issuance or denial of a Section 401 WQC.
- iii. The Director may issue a Section 401 WQC for a term not to exceed two (2) years.

i. Section 401 Water Quality Certification Waiver

- i. The Director shall act on a request for certification within a period which shall not exceed one (1) year after receipt of a complete Section 401 WQC Application.
- ii. If the Director fails or refuses to act on a request for certification within a reasonable period of time (which shall not exceed one year), after receipt of a complete application package, the certification requirements may be waived with respect to Federal applications by the COE.
- iii. If the discharge in question fulfills a specific condition of the Federal permit pursuant to 33 CFR §§330.5 and 330.6, the Director will determine, on a case-by-case basis, if the project is considered to be minor and non-controversial. Public participation requirements may be waived for minor and noncontroversial activities within one year of the receipt of a completed Section 401 WQC Application.

j. Section 401 Water Quality Certification Conditions

The owner or its duly authorized representative is required to comply with all conditions noted within the certification or waiver.

k. Definitions

For the purpose of the Section 401 WQC Application, "discharge" includes any material, solid or liquid or otherwise, which is placed into navigable waters.

- i. "Discharge" when used without qualification includes a discharge of a pollutant and a discharge of pollutants. (Section 502(16) of the CWA)

- ii. “Pollutant” means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This also includes materials and/or equipment used for construction within navigable waters (i.e., concrete, silt containment devices, construction equipment, etc.). This term does not mean:
  - (1) “Sewage from vessels” within the meaning of Section 312 of the CWA; or
  - (2) Water, gas or other material which is injected into a well to facilitate production of oil or gas or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that such injection or disposal will not result in the degradation of ground or surface water resources. (Section 502(6) of the CWA)
- iii. “Discharge of a pollutant” and “discharge of pollutants” each means:
  - (1) Any addition of any pollutant to navigable waters from any point source; and
  - (2) Any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft. (Section 502(12) of the CWA)
- iv. “Navigable waters” means the waters of the United States, including the territorial seas. (Section 502(7) of the CWA)
- v. “Waters of the United States” or “waters of the U.S.” means:
  - (1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
  - (2) All interstate waters, including interstate “wetlands;”
  - (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands,” sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
    - (a) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
    - (b) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
    - (c) Which are used or could be used for industrial purposes by industries in interstate commerce;
  - (4) All impoundments of waters otherwise defined as waters of the United States under this definition;
  - (5) Tributaries of waters identified in paragraphs (1) through (4) of this definition;

- (6) The territorial sea; and
- (7) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.] Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

NOTE: At 45 FR 48620, July 21, 1980, the Environmental Protection Agency suspended until further notice in §122.2, the last sentence, beginning "This exclusion applies. . ." in the definition of "Waters of the United States." This revision continues that suspension.<sup>1</sup> (40 CFR §122.2)

#### I. Abbreviations

BMPs	-	Best Management Practices
CFR	-	Code of Federal Regulations
COE	-	U.S. Army Corps of Engineers
CWA	-	Clean Water Act
CWB	-	Clean Water Branch of the State of Hawaii Department of Health Environmental Management Division
CWRM	-	Commission of Water Resources Management of the State of Hawaii Department of Land and Natural Resources
CZM	-	Coastal Zone Management Certification (administered by State DBEDT/ Office of Planning)
DA	-	Department of Army Permit (issued by U.S. Army Corps of Engineers under various Federal authorizations)
DBEDT	-	State of Hawaii Department of Business, Economic Development and Tourism
DLNR	-	State of Hawaii Department of Land and Natural Resources
DOH	-	State of Hawaii Department of Health
EPA	-	Environmental Protection Agency
GP	-	DA Regional General Permit
HAR	-	Hawaii Administrative Rules
HRS	-	Hawaii Revised Statutes
IP	-	DA Individual Permit
LOP	-	DA Letter of Permission
MPRSA	-	Marine Protection, Research and Sanctuaries Act of 1972
NPDES	-	National Pollutant Discharge Elimination System
NWP	-	DA Nationwide Permits
PCNs	-	Pre-Construction Notifications
PDNs	-	Pre-Discharge Notifications
PGP	-	DA State Programmatic General Permit
RCRA	-	Resource Conservation and Recovery Act
RHA	-	Rivers and Harbor Act of 1899
SARA	-	Superfund Amendment and Reauthorization Act
SCAP	-	Stream Channel Alteration Permit (administered by State DLNR/CWRM)
WQC	-	Water Quality Certification (issued by the Clean Water Branch - Section 401 of the CWA)



## General Monitoring Guideline for Section 401 Water Quality Certification Projects

Period of Construction Project	<1 to 4 Months					\$5 Months to #4 Year					Construction Project Monitoring Frequency*		
Parameter to Monitor for "X" Months of "In-Water" Work	#1	>1	2	3	4	\$5	1	2	3	#4	Pre-	During	Post
Photo Documentation	U										U	U	U
pH	T	U	U	U	U	U	U	U	U	U	U	U	°
Turbidity	T	U	U	U	U	U	U	U	U	U	U	U	°
Total Suspended Solids (TSS)	T	U	U	U	U	U	U	U	U	U	U	U	°
Dissolved Oxygen (DO)	T	T	T	T	T	T	T	T	T	T	U	U	°
Salinity	T	T	T	T	T	T	T	T	T	T	U	U	°
Temperature	T	T	T	T	T	T	T	T	T	T	U	U	°
Secchi Disc or Light Extinction	-	-	-	-	-	-	-	-	-	-	-	-	-
Biological Monitoring	X	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Nitrate + Nitrite Nitrogen (NO <sub>3</sub> NO <sub>2</sub> )	•	•	•	•	•	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž
Total Kjeldahl Nitrogen (TKN)	•	•	•	•	•	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž
Ammonia Nitrogen (NH <sub>4</sub> )	•	•	•	•	•	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž
Total Nitrogen (TN)	•	•	•	•	•	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž
Ortho-Phosphate (PO <sub>4</sub> )	•	•	•	•	•	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž
Total Phosphorus (TP)	•	•	•	•	•	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž
Chlorophyll %	•	•	•	•	•	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž
Silicate	•	•	•	•	•	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž
Pesticides, PAHs, metals, etc.	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž
Other													
Monitoring Frequency	D	D	D	3W	3W	3W	2M	M	Q	Q	*	**	***

Symbol Legend	
U	Basic water quality monitoring parameters
T	Included with dredging projects, if no habitat loss or modification
°	Optional per data evaluation suggesting no significant impact
-	Optional per dredging projects
X	Photo documentation on dredging project with some habitat loss or modification
Y	Bio-monitoring on dredging projects with habitat loss or modification
Ž	To be determined on individual case
•	Optional per individual cases for dredging projects

\* Pre-construction sampling for TSS and Turbidity of TEN samples over TWO weeks for projects that impact bottom sediment.

\*\* During construction monitoring is limited to length of "in-water" work period.

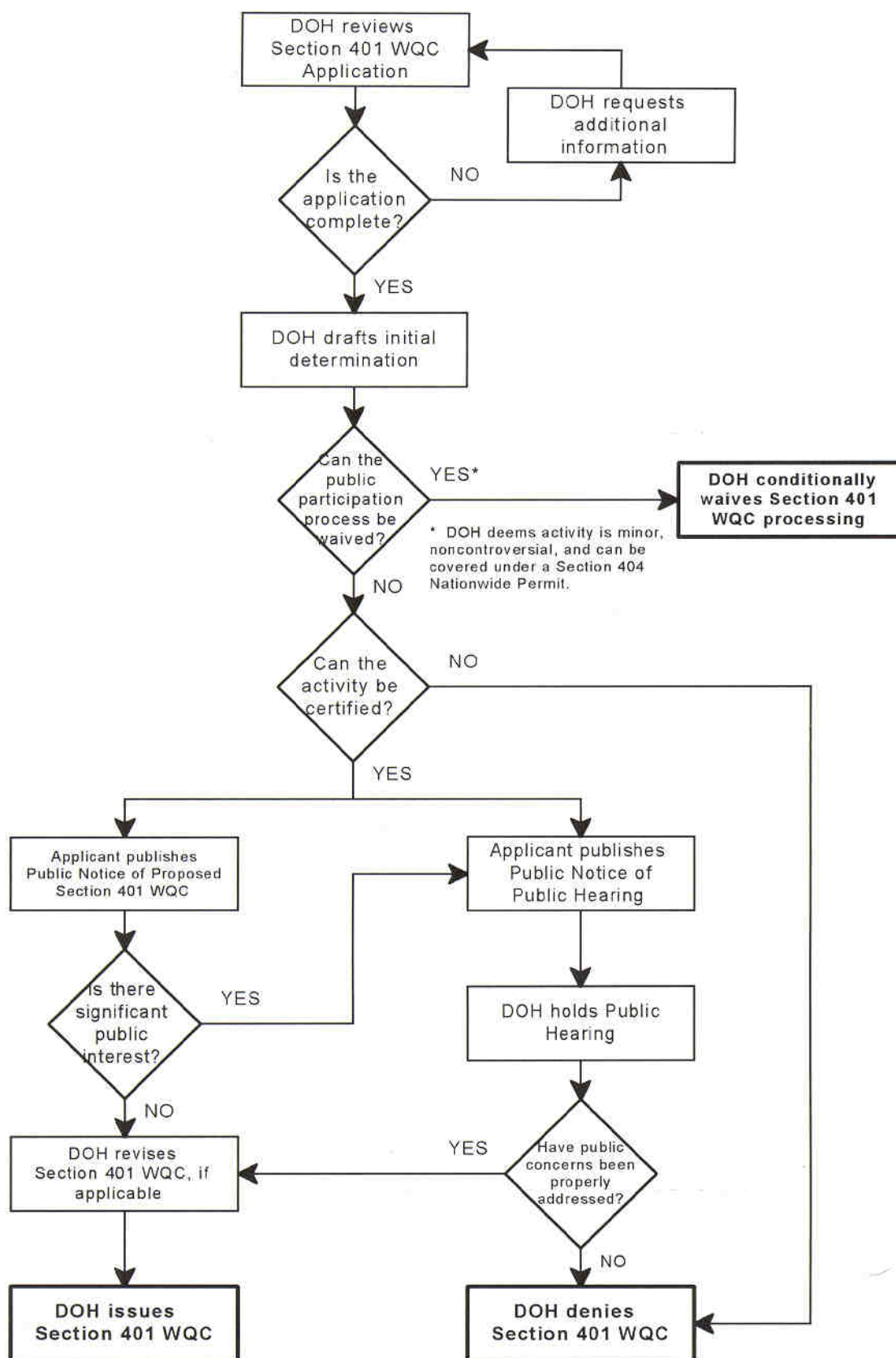
\*\*\* Post-construction monitoring is limited to once per construction period.

**Shaded blocks represent basic or minimum requirement for most projects.**

D = Daily  
W = Weekly  
M = Monthly  
Q = Quarterly  
(i.e., 3W = three times per week)

### Notes:

## Section 401 Water Quality Certification Processing Flowchart



## Section 401 Water Quality Certification (WQC) Blanket Coverage Processing Flowchart

